

MONTANA LEGISLATIVE HISTORY

Chapter 271 19 74

Bill H 924 S _____

Original bill & history ☒ C

H. Committee on Nat. Res.

Hearing Date(s) 2/12/74 ☒ C

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Date Out _____ C

S. Committee on Nat. Resources

Hearing Date(s) 3/4/74 ☒ C

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Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE BILL NO. 924

INTRODUCED BY HALVORSON, BRAND, SWANBERG, LUNDGREN, HUENNEKENS,
TOWE, ZIMMER, JONES, TURNER, BROWN

89-3503 THROUGH 89-3511, 89-3514

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE FLOODWAY
MANAGEMENT AND REGULATION ACT, SECTION 89-3501 ET SEQ.,
R.C.M. 1947, TO PROVIDE FOR THE DESIGNATION OF FLOODPLAINS
AND FLOODWAYS; TO SHORTEN TO SIX MONTHS THE TIME WITHIN
WHICH A POLITICAL SUBDIVISION MAY ADOPT LAND-USE
REGULATIONS; TO EMPOWER THE BOARD OF NATURAL RESOURCES AND
CONSERVATION TO SHORTEN UPON NOTICE THE SIX-MONTH TIME
PERIOD WHEN NECESSARY TO COMPLY WITH FEDERAL FLOOD INSURANCE
REGULATIONS; AND TO ALLOW LOCAL POLITICAL SUBDIVISIONS TO
ADOPT EXCLUSIVE FLOODPLAIN AND FLOODWAY LAND-USE REGULATION
AND PERMIT SYSTEMS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 89-3503, R.C.M. 1947, is amended to
read as follows:

"89-3503. Definitions. As used in this act, unless the
context otherwise requires:

(1) "A flood of one hundred (100) year frequency" means
a flood magnitude expected to recur on the average of once
every one hundred (100) years, or a flood magnitude which

Corrected, Introduced Copy

has a one percent (1%) chance of occurring in any given
year;

~~(2) "Artificial obstruction" shall mean any
obstruction which is not a natural obstruction;~~

~~(3) (2)~~ "Channel" shall mean the geographical area
within either the natural or artificial banks of a
watercourse or drainway;

~~(4) (3)~~ "Board" shall mean the ~~Montana water resources~~
board of natural resources and conservation;

~~(5) (4)~~ "Department" means the department of natural
resources and conservation provided for in title 82A,
chapter 15;

~~(6) (5)~~ "Designated floodway" shall mean a floodway
whose limits have been designated and established by order
of the board.

~~(7) (6)~~ "Designated floodplain" means a floodplain whose
limits have been designated and established by order of the
board;

~~(8) (7)~~ "Drainway" shall mean any depression two (2) feet
or more below the surrounding land serving to give direction
to a current of water less than nine (9) months of the year,
having a bed and well-defined banks; provided, that in the
event of doubt as to whether a depression is a watercourse
or drainway, it shall be presumed to be a watercourse;

~~(9) (8)~~ "Flood" shall mean the water of any watercourse or

1 drainway which is above the bank or outside the channel and
2 banks of such watercourse or drainway;

3 (9) "Floodway" shall mean the channel of a watercourse
4 or drainway and those portions of the floodplain adjoining
5 the channel which are reasonably required to carry and
6 discharge the flood water of any watercourse or drainway;

7 ~~{10}-"Floodway-encroachment-lines"-shall-mean-the-lines~~
8 ~~limiting-a-designated-floodway;~~

9 ~~{11}-(10)~~ "Floodplain" shall mean the area adjoining
10 the watercourse or drainway which ~~has-been-or-may-hereafter~~
11 would be covered by the flood water of a flood of one
12 hundred (100) year frequency;

13 ~~{12}-(11)~~ "Establish" shall mean construct, place,
14 insert, or excavate;

15 ~~{13}-(12)~~ "Natural obstruction" shall mean any rock,
16 tree, gravel, or analogous natural matter that is an
17 obstruction and has been located within the floodplain or
18 floodway by a nonhuman cause;

19 ~~{14}-(13)~~ "Obstruction Artificial obstruction" shall
20 mean any obstruction which is not a natural obstruction and
21 includes any dam, wall, riprap, embankment, levee, dike,
22 pile, abutment, projection, revetment, excavation, channel
23 rectification, bridge, conduit, culvert, building, refuse,
24 automobile body, fill, or other analogous structure or
25 matter in, along, across, or projecting into any floodplain

1 or floodway which may impede, retard or change the direction
2 of the flow of water, either in itself or by catching or
3 collecting debris carried by such water, or that is placed
4 where the natural flow of the water would carry the same
5 downstream to the damage or detriment of either life or
6 property;

7 ~~{15}-(14)~~ "Owner" shall mean any person who has
8 dominion over, control of, or title to an obstruction;

9 ~~{16}-(15)~~ "Political subdivision" shall mean any
10 incorporated city or town or any county organized and having
11 authority to adopt and enforce land-use regulations; and

12 (16) "Responsible political subdivision" means a
13 political subdivision that has enacted land-use regulations
14 in accordance with this act.

15 (17) "Watercourse" shall mean any depression two (2)
16 feet or more below the surrounding land serving to give
17 direction to a current of water at least nine (9) months of
18 the year, having a bed and well-defined banks; provided,
19 that it shall, upon order of the board, also include any
20 particular depression which would not otherwise be within
21 the definition of watercourse."

22 Section 2. Section 89-3504, R.C.M. 1947, is amended to
23 read as follows:

24 "89-3504. Program for delineation of floodways --
25 floodway-encroachment lines -- land-use regulations. (1) The

board shall initiate a comprehensive program for the delineation of designated floodplains and designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data, and have authority to enter into arrangements with the United States geological survey, the United States army corps of engineers or any other state or federal agency for such acquisition.

(2) When sufficient data have been acquired ~~to reasonably locate the floodway of a flood of one hundred (100) year frequency~~, the board shall establish, by order, after a public hearing, the designated floodplain floodway encroachment lines for such a floodway within which a political subdivision may establish land-use regulation. When sufficient data have been acquired, the board shall establish, by order, after a public hearing, the designated floodway within which a political subdivision may establish land-use regulation. These designations shall be based upon reasonable hydrological certainty. When the designated floodplain or the designated floodway has been established, ~~The~~ the board shall furnish such data to officials of the political subdivision having jurisdiction over such areas together with a map outlining the areas involved, a copy of this act, adopted rules and regulations of the board, and suggested minimum standards. These standards, rules and

regulations shall reflect gradations in flood hazard based on ~~flood frequency and other~~ criteria as outlined in subsection (2) of section 7 [89-3507 (2)] of this act. ~~The location of the encroachment lines shall be the estimated outer boundary of the floodway of one hundred (100) year frequency flood, as determined from the available data.~~ The board shall record all ~~floodway encroachment lines~~ designated floodplains or designated floodways established by it in the office of the county clerk and recorder of each county in which such ~~lines~~ floodplains or floodways are found. The board shall have the power to alter such ~~lines~~ floodplains or floodways at any later time, by order, after a public hearing if a re-evaluation of the then available flood data warrants it. Notice of any such hearing or order of the board establishing or altering any such ~~line~~ floodplains or floodways shall be given by publishing such notice once each week for three consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten (10) days prior to the date set for the hearing or the effective date of such order.

(3) ~~If within one (1) year from the date of~~ Upon transmittal of the floodplain information to officials of ~~the a political subdivisions~~ subdivision, ~~any the~~ political subdivision has ~~failed~~ six (6) months from the date of

transmittal to adopt land-use regulations which meet or exceed the minimum standards of the board. If within the six (6) month period the political subdivision has failed to adopt the land-use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the board under subsection (2) of this section, ~~the designated floodway shall be enforced~~ and no artificial obstruction or nonconforming use shall be established by any person within the designated floodplain or the designated floodway ~~encroachment lines for such a one hundred (100) year flood as established by the board under subsection (2) of this section~~, unless specifically authorized by the board. When necessary for compliance with federal flood insurance requirements, the board may shorten the six (6) month period upon notification to the political subdivision and publication of a notice thereof in a newspaper of general circulation in the affected area once a week for three (3) consecutive weeks."

Section 3. Section 89-3505, R.C.M. 1947, is amended to read as follows:

"89-3505. Artificial obstructions and nonconforming uses as nuisances. Any artificial obstruction or nonconforming use in any designated floodplain or designated floodway enforced under section 89-3504, subsections (3) or

(4) and not exempt under section 6 [89-3506] of this act is hereby declared to be a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the ~~board~~ department or the responsible political subdivision."

Section 4. Section 89-3506, R.C.M. 1947, is amended to read as follows:

"89-3506. Establishment of artificial obstructions or nonconforming uses unlawful -- permitted open space uses -- prohibited nonconforming uses. (1) It shall be unlawful for a person to establish any artificial obstruction or nonconforming use within a designated floodplain or a designated floodway, ~~or (2) for any owner to permit any artificial obstruction to remain within a designated floodway~~ without a permit from the ~~board~~ department or the responsible political subdivision. This act shall not affect any existing artificial obstruction or nonconforming use established in the designated floodplain or designated floodway prior to the effective date of this act and before the board has enforced a designated floodway under section 89-3504, subsections (3) or (4); provided, that no person shall make nor shall any owner allow alterations of any artificial obstruction or nonconforming use within a designated floodplain or a designated floodway whether the obstruction proposed for alteration was located in the

1 floodplain or floodway before or after the effective date of
2 this act except upon express written approval of the board
3 department or the responsible political subdivision.
4 Maintenance of an obstruction shall not be construed to be
5 an alteration.

6 (2) The following open space uses shall be permitted
7 within the designated floodplain and the designated
8 floodway, to the extent that they are not prohibited by any
9 other ordinance or statute, and provided they do not require
10 structures other than portable structures, fill, or
11 permanent storage of materials or equipment; (a)
12 agricultural uses (b) industrial-commercial uses such as
13 loading areas, parking areas, emergency landing strips (c)
14 private and public recreational uses such as golf courses,
15 tennis courts, driving ranges, archery ranges, picnic
16 grounds, boat launching ramps, swimming areas, parks,
17 wildlife management and natural areas, game farms, fish
18 hatcheries, shooting preserves, target ranges, trap and
19 skeet ranges, hunting and fishing areas, hiking and
20 horseback riding trails (d) forestry, including processing
21 of forest products with portable equipment (e) residential
22 uses such as lawns, gardens, parking areas and play areas
23 (f) excavations subject to the issuance of a permit under
24 section 7 [89-3507].

25 (3) The following nonconforming uses shall be

1 prohibited within the designated floodway: (a) Any building
2 for living purposes or place of assembly or permanent use by
3 human beings (b) any structure or excavation that will cause
4 water to be diverted from the established floodway, cause
5 erosion, obstruct the natural flow of water, or reduce the
6 carrying capacity of the floodway (c) the construction or
7 permanent storage of any object subject to flotation or
8 movement during flood level periods."

9 Section 5. Section 89-3507, R.C.M. 1947, is amended to
10 read as follows:

11 "89-3507. Permits for obstructions -- application --
12 factors considered -- fees. (1) The board department or the
13 responsible political subdivision shall have the power to
14 issue permits for the establishment or alteration of
15 artificial obstructions and nonconforming uses which would
16 otherwise violate section 6 [89-3506] of this act. The
17 application for the permit shall contain such information as
18 the board department or the responsible political
19 subdivision shall require, including complete maps, plans,
20 profiles and specifications of the obstruction or use and
21 watercourse or drainway.

22 (2) In passing upon such application, the board
23 department or the responsible political subdivision shall
24 consider in accordance with the minimum standards
25 established by the board (a) the danger to life and property

1 by water which may be backed up or diverted by such
 2 obstruction or use, (b) the danger that the obstruction or
 3 use will be swept downstream to the injury of others, (c)
 4 the availability of alternate locations, (d) the
 5 construction or alteration of the obstruction or use in such
 6 a manner as to lessen the danger, (e) the permanence of the
 7 obstruction or use, (f) the anticipated development in the
 8 foreseeable future of the area which may be affected by the
 9 obstruction or use, and (g) such other factors as are in
 10 harmony with the purpose of this act. The board department
 11 or the responsible political subdivision may make a part of
 12 such permit any reasonable conditions it may deem advisable.
 13 In order for the permit to continue to remain in force, the
 14 obstruction or use must be maintained so as to comply with
 15 the conditions and specifications of the permit.

16 (3) Permits for obstructions or uses to be established
 17 in the designated floodplain or designated floodway of
 18 watercourses must be specifically approved or denied within
 19 a reasonable time by the board department or the responsible
 20 political subdivision; permits for obstructions or uses in
 21 the designated floodplains or designated floodways or
 22 drainways shall be conclusively deemed to have been granted
 23 sixty (60) days after the receipt of such application by the
 24 board department or the responsible political subdivision,
 25 or after such time as the board or the responsible political

1 subdivision shall ~~by--rule~~ specify, unless the board
 2 department or the responsible political subdivision notifies
 3 the applicant that the permit is denied. The responsible
 4 political subdivision shall send to the department a copy of
 5 each permit granted pursuant to this section.

6 (4) Every application for a permit shall be
 7 accompanied by a nonrefundable application fee of ten
 8 dollars (\$10) which the state treasurer shall credit to the
 9 floodway obstruction removal fund."

10 Section 6. Section 89-3508, R.C.M. 1947, is amended to
 11 read as follows:

12 "89-3508. Powers and duties of board relative to
 13 obstructions. The powers and duties of the board relative to
 14 obstructions in a board floodway shall include the
 15 following:

16 (1) Where an obstruction to a designated floodway
 17 established under section 89-3504, subsections (2) or (4)
 18 has been created by fallen trees, silt, debris, wreckage,
 19 unanchored automobile bodies, and like matter, the board
 20 may, in its discretion, remove the obstruction, in which
 21 case the cost of removal shall be borne by the board; and

22 (2) Where, after investigation, notice, and hearing,
 23 an order has been issued to the owner of an obstruction not
 24 exempt under the provisions of section 6 [89-3506] of this
 25 act for its removal or repair, and the order is not complied

1 with within such reasonable time as may be prescribed, or if
2 the owner cannot be found or determined, the board may make
3 or cause such removal or repairs to be made, the cost of
4 which shall be borne by the owner and shall be recoverable
5 in the same manner as debts are now recoverable by law."

6 Section 7. Section 89-3509, R.C.M. 1947, is amended to
7 read as follows:

8 "89-3509. Authority to enter and investigate lands or
9 waters. The board, its agents, surveyors, or other
10 employees, may make reasonable entry upon any lands and
11 waters in the state for the purpose of making any
12 investigation, survey, removal, or repair contemplated by
13 this act. An investigation of any natural or artificial
14 obstruction or nonconforming use shall be made by the board
15 either on its own initiative, on the written request of any
16 three (3) titleholders of land abutting the watercourse or
17 drainway involved, or on the written request of any
18 political subdivision."

19 Section 8. Section 89-3510, R.C.M. 1947, is amended to
20 read as follows:

21 "89-3510. Obstructions exempt where drainage area is
22 small. This act shall not extend to any obstruction in the
23 floodplain or floodway of a watercourse or drainway where
24 the drainage area above the same, either within or without
25 the state, is less than twenty-five (25) square miles in

1 extent, unless a particular watercourse or drainway is
2 expressly declared to be within the coverage of this act by
3 order of the board."

4 Section 9. Section 89-3511, R.C.M. 1947, is amended to
5 read as follows:

6 "89-3511. Orders and rules -- judicial remedy. The
7 board may issue such orders and rules as are necessary to
8 implement the provisions of this act. If an order is issued
9 to the owner of an artificial obstruction or nonconforming
10 use not exempt under the provisions of section 6 [89-3506]
11 of this act for its removal or repair, such order shall not
12 become effective less than (10) days after a hearing is held
13 relating to such order. In addition to any requirement
14 imposed by subsection (2) of section 4 [89-3504 (2)] of this
15 act, where any order is issued which affects with
16 particularity the land adjacent to any watercourse or
17 drainway, notice of the contents of such order and of any
18 required hearing shall be mailed by the board to the
19 titleholder of such land not less than ten (10) days before
20 the effective date of such order, or, if there is a required
21 hearing, to the titleholder of such land and to the owner of
22 the artificial obstruction or nonconforming use not less
23 than ten (10) days before the date of such hearing;
24 provided, that such notice need not be given to the owner of
25 the artificial obstruction or nonconforming use for an order

issued pursuant to subsection (2) of section 8 [89-3508 (2)] of this act if the owner cannot be found or determined. All orders and rules issued by the board shall be on file at the offices of the board and in the office of the county clerk of each county affected by such order or rule. Any person aggrieved by any order of the board issued under this act may appeal from such order to a court of competent jurisdiction within thirty (30) days after its effective date. In the event such an appeal is taken, enforcement of such order shall be stayed pending the outcome of such appeal. Service of notice of the appeal shall be made upon the director of the board."

Section 10. Section 89-3514, R.C.M. 1947, is amended to read as follows:

"89-3514. Permit construed as added requirement--exception--immunity. (1) The granting of a permit under the provisions of this act shall in no way affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision or of the United States, but shall be construed as an added requirement; provided, that if a political subdivision enacts in harmony with the purposes of this act permit issuance ordinances, regulations or resolutions and land-use ordinances, regulations or resolutions which meet or exceed the minimum standards of the board, and if the

administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the board, no permit from the department is required; however, if the board determines that there is a failure by a political subdivision to comply with the intent, purposes and provisions of this act and the minimum standards adopted thereunder, the powers of the political subdivision may be suspended after hearing, and the minimum standards adopted by the board shall be enforced by the department until such time as the board determines that the political subdivision will comply. and--enforces--land-use regulations--which--meet--or--exceed--the--minimum--standards--of the--board,--the--board's--recommendations--in--regard--to artificial--obstructions--or--nonconforming--uses--shall--be advisory-only. The grant or denial of a permit shall not have any effect on any remedy of any person at law or in equity; provided, that where it is shown that there is a wrongful failure to comply with this act, there shall be a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of any person bringing suit.

~~(2)--No permit for the construction of any structure to be established within a designated floodway shall be granted by any political subdivision unless the applicant has first obtained the permit required by this act, or until the board~~

1 ~~acknowledges-that-such-structure-would-not-be-an-obstruction~~
2 ~~within-the-meaning-of-this-act.~~

3 (3)-(2) No action for damages sustained because of
4 injury caused by an obstruction for which a permit has been
5 granted under this act shall be brought against the state,
6 the board, a member of the board, or its employees or
7 agents. No provision of this act shall be construed as
8 interfering in any way with the right of the United States
9 to regulate interstate commerce or the navigable waters of
10 the United States."

11 Section 11. This act is effective on its passage and
12 approval.

-End-

HB 924

SAFETY ENVELOPE MFG. CO
MILWAUKEE, WIS. 53201

COMMITTEE

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COMMITTEE

43 rd LEGISLATIVE SESSION 1974

[illegible]

NATURAL RESOURCES--7

COMMITTEE

43rd Legislative Assembly

Bill No.	Subject Matter	Date In	Hearing Date	Comments	Date Out	Committee Action	Final Action
HB 1101 Schepens	Revising the list of public uses for which the right of eminent domain may be exercised.	Jan. 23	Feb. 14		Feb. 16	DO PASS AS AMENDED	
HJR 54 Colberg	Coal-based industrial demands for waters of the Yellowstone Basin are increasing and consequences are poorly understood. Study.	Jan. 23	Feb. 12			DO PASS AS AMENDED	
HJR 58 Kosena	Directing the Board of Nat. Res. to abandon the Daly Ditch Irrig. Project.	Jan. 23	Feb. 14		Feb. 14	BE ADOPTED AS AMENDED	Killed in Senate at Res. 3/13
HB 924 Halvorson	Amending the Floodway Management and Regulation Act	Jan. 24	Feb. 12		Feb. 12	DO PASS AS AMENDED	
HB 1076 Towe	Act to authorize citizens to complain to certain state agencies about env. degradation.	Jan. 24	Jan. 29				Killed on Second Reading 3/13
SB 558 Klindt	Amending the Montana strip mining act by deleting the word "clay"	Jan. 24	March 5		Mar. 5	BE CONCURRED IN	SIGNED BY GOVERNOR 3/14

Photocopied from collections in the Montana Historical Society Archives

Tuesday, February 12, 1974

The Natural Resources Committee met at 10:35 am in the Governor's Reception Room with Chairman Shelden presiding and a quorum present.

HB 924: Rep. Halvorson, the chief sponsor, stated this bill amends the floodway management act. She said the amendments to the bill are a joint endeavor.

Rep. Brand, co-sponsor of the bill, said a few words in support of the bill. He said there are some problems with the flood plain in the Cottonwood Creek area and people and agencies got together and decided some amendments were needed to the flood plains bill of the year before. Their amendments, in the form of HB 924, are still over and above the federal regulations. He said he supports the original HB 924 wholeheartedly as it would enable people to get relief in insurance programs.

Gary Wicks, Nat. Res. Dept., was the next speaker. His testimony on "Flood Plain Management Status" is included with the minutes and is exhibit 1. He also handed out a pamphlet on "Flood Plain Management Questions and Answers" which is exhibit 2. A copy of the proposed amendments is exhibit 3.

Tom France, Environmental Information Center, urged the committee to permit rural areas to continue on the one zone approach so no development will occur in the flood plain in these areas. He left copies of amendments he would like considered. A copy of these is exhibit 4.

H. S. Hanson, Montana Technical Council, was the next speaker. His testimony is exhibit 5.

Joseph B. Gary, Riverside Country Club, was the next speaker. His testimony is exhibit 6.

OPPONENTS

Dale McGarvey, Flathead Flood Plain, said he thought they were opponents. He wanted a two zone concept--with the right to build on the flood plain but not the flood way. He used the blackboard and demonstrated the difference between a flood way and a flood plain. He objected to Mr. France's idea of having the rural area stay in a one zone concept as the Evergreen subdivision on the Flathead which he is primarily concerned with is in a rural area.

Frank Guay, Flathead Flood Plain, was also concerned about the Evergreen subdivision. He said it had a lot of old and retired people and had a big impact on the city of Kalispell--it would involve one third of the business potential for the area. He wasn't opposed to the bill but wanted it amended.

Joe DeLong, County Commissioner of Flathead County, spoke in favor of the two zone concept. He said he concurred with flood way but not flood plain regulations. He stressed the need of having responsibility on a local level.

Conrad Fredricks, Sweet Grass Co. Pres. Assn., felt on page 17, line 3, local governing bodies should also be covered by this immunity clause.

Tuesday, February 12, 1974--Page 2

Donald R. Reichmuth, Gallatin Sportsman, was the next speaker. He said he had worked on the Evergreen water system and had taken photographs which he passed around for the committee to see. He said this was a very low area, a river bed that is basically part of the river, and not suitable for human habitation. He felt we should help the people there by getting them to higher ground but not to compound the problem by letting more construction be done.

Neal T. Allerd, Flathead Flood Plain, was the next speaker. He said Mr. Reichmuth was referring to the 1964 flood which was a 1000 year flood. He said in 1948 they had a hundred year plus flood which hardly touched Evergreen. He said we cannot legislate against all of nature.

Orrin Blekin, Springdale Additions Imp. Assn., was the next speaker. He also referred to Mr. Reichmuth's testimony. He said the water district involved is paying back all the money with interest that it needed to recover from the 1964 flood. He said they will be one of the largest water companies in the state of Montana serving the people who choose to live in the Evergreen area. He said as far as high ground water is concerned--it's everywhere in that area--even under the city of Kalispell.

Elizabeth Smith, Montana Wilderness Assn., was the next speaker. She said they were strongly opposed to HB 924 or any other bill that would weaken the flood plain management act. She said she was aware of the special Kalispell problem and felt they should get some form of relief but didn't feel to do this the whole state should be put under the two zone concept, which she felt was a dangerous concept.

Mr. McGarvey stated he wished to make clear that all of the regulations in the flood way would stand. What the bill does, he said, is to provide different regulations for the flood plain--regulations to fit the hazard.

Reps. Halvorson and Brand stated they would support the amendments that had been worked out.

Questions were asked by the committee. Mr. Wicks responded to a question that to build in the flood plain area the applicant would need to apply for a permit from the county commissioners. The determination of just where the flood way stops and the flood plain starts would be made on information provided by HUD.

Signing as supporting HB 924 were:

Vern W. Lupton, also wished to amend
Jack F. Barrett, Kalispell

HB 949: Rep. Roberts, the bill's chief sponsor, was the first to speak on the bill. He said this bill is to amend the water use act. The bill has the fish and game department represent the public's recreational use of water in water adjudications. He said it is a touchy area as noone knows if there is such a thing as a recreational use by the public that is a valid water right. He said it is important to give them an opportunity to determine this question. He felt if it is decided to be a valid use it would give Montana a further claim on her waters. He said he knew the fish and game department were unpalatable to many people but

FLOOD PLAIN MANAGEMENT STATUS

Since our public information meetings held in November and December, two significant things have occurred that will affect the State flood-plain management program.

The first and perhaps most significant is the passage of a new federal flood insurance law in late December. This law, entitled the Flood Disaster Protection Act of 1973, completely changes the scope of the existing national flood insurance program since participation in the insurance program will be mandatory for those areas with a flood problem. Accordingly, under Section 201 of the act, HUD is required to notify each community in the nation that is considered to have a flood problem. Such notice, together with a map outlining the area of special flood hazard (100-year flood plain) has been sent to several Montana communities. Altogether, HUD has indicated tentatively that 66 Montana cities and towns and 20 Montana counties will be so notified.

After a community has been notified by HUD, the community has until July 1, 1975 to adopt acceptable land-use regulations for its area of special flood hazard and to apply for participation in the insurance program. If a community fails to adopt acceptable regulations by July 1, 1975, Section 202 of the law provides that no federally regulated or insured bank can make real estate or construction loans in the area of special flood hazard. In addition, no federal agency can approve any financial assistance for acquisition or construction purposes, including disaster relief, unless the community is eligible.

The land-use regulations required by HUD are based on the "two-zone" or "floodway-flood fringe" concept. This is a regulatory concept that attempts to relate the degree of land-use control to the degree of flood hazard involved. To this end, a portion of the entire 100-year flood plain is reserved for the passage of floodwaters. This is the "floodway", and since it is to be reserved for flowing flood waters, a strict prohibition on most structures is adopted. The remainder of the flood plain is still subject to flooding, but in most cases the water is shallow and velocities are slight. Since construction in this area is not so hazardous and would have little obstructing effect on the downstream passage of floods, this "flood fringe" area can be developed with only slight regulation. Thus, any and all types of development are permitted in this area provided that they are built on fill or floodproofed. HUD's minimum requirements would require homes to be built on fill while all other structures would have the option of fill or floodproofing.

The determination of a floodway requires a hydraulic engineering study, however, that will not be available when HUD initially informs communities that they have a flood hazard area. Thus, if a community has no floodway or flood elevation data initially, HUD regulations require only that the community require and review building permits for new construction and major repairs. Until such time as more detailed flood information is provided by HUD, each permit application would have to be reviewed on a case-by-case basis to determine the degree of flood hazard.

Once an area becomes eligible for the sale of flood insurance, all existing structures and new construction are eligible for subsidized flood insurance in the following amounts at the premium rates noted:

SUBSIDIZED INSURANCE

<u>LIMIT</u>		<u>PREMIUM (per \$100.00 COVERAGE)</u>
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Contents, non-residential	\$100,000	.75

\$ 87.50

After HUD finishes a rate-making study and provides floodway data to local officials, a second layer of coverage at actuarial rates becomes available. Thus, the total amount of coverage available becomes twice the amount listed above. In addition, once a rate study is completed, any new construction in the flood hazard area can obtain insurance only at actuarial rates.

Section 102 of the new flood insurance law provides that any new loans in an area where insurance is available must be insured for the full value of the loan or the maximum coverage available, whichever is less. Failure of an individual to buy insurance will not prevent him from obtaining disaster relief if insurance is generally available in the area, but he can obtain the disaster assistance only if he purchases flood insurance on his property.

The second significant change in the state program is the bill introduced to amend the State Floodway Management Act. Under rules adopted pursuant to the existing law, the Department had implemented a regulatory program based on a fairly restrictive single-zone approach. As explained in meetings in November and December, this would prohibit all new residential or commercial construction in a 100-year flood plain area. Because such an approach could conceivably create a severe economic hardship in urbanized areas such as Evergreen, and because the State standards were not compatible with HUD flood insurance standards, HB 924 has been introduced and is supported by this Department.

HB 924, if enacted, would make three substantive changes to the existing state law. First, and perhaps most important, is a change in wording to require the Department to delineate both a "floodway" and a "flood plain". This would make State regulations compatible with those of other States and Federal agencies.

A second significant change in the proposed law is a provision giving exclusive permit granting authority to local political subdivisions. Under the existing law, a city or county wishing to regulate flood plain areas locally has to use other land-use enabling legislation as a statutory basis. The Floodway Management Act, as it exists, does not give any land-use authority to cities or counties.

HB 924 will, if enacted, also shorten the length of time given for adoption of flood-plain regulations from one year to six months. The reason for this change is to insure that flood-plain regulations take effect before the July 1, 1975 deadline for participation in the flood insurance program. This will hopefully insure that the economic sanctions imposed for non-participation in the flood insurance program will not be required for any of the 36 Montana communities.

On the following pages is a list of questions and answers concerning the new flood insurance law and the proposed new State law. This list certainly will not answer all questions on such a complex issue, but will serve as a starting point for further discussion.

FLOOD-PLAIN MANAGEMENT QUESTION AND ANSWERS

QUESTION: If a community adopts the required land-use regulations and becomes eligible for flood insurance, is everyone in the flood-plain area required to purchase the insurance?

ANSWER: No. An individual would have the option to buy insurance to protect existing structures and contents if he chose to do so. Persons purchasing flood-plain properties would, however, be required to buy flood insurance if they borrow from a federally regulated or insured lending institution. In this case, the amount of insurance required would be the outstanding balance of the loan.

QUESTION: If a person buys flood insurance, is he still eligible for federal disaster relief benefits?

ANSWER: Yes. There is, however, a non-duplication of benefits clause in the Disaster Relief Act that would limit disaster relief to losses above those covered by insurance.

QUESTION: Is a person who was able to buy insurance but did not do so, eligible for disaster relief?

ANSWER: Yes, but he would be required to purchase flood insurance on reconstruction and repair work as a condition to receiving the disaster relief aid.

QUESTION: Suppose the community decides not to regulate land-use and does not participate in the insurance program. Are people still eligible for disaster relief?

ANSWER: No. Emergency rescue and repair would still be made available, but other benefits such as low-interest loans would be prohibited.

QUESTION: Once a community becomes eligible for insurance, is anyone prohibited from buying insurance?

ANSWER: No. All existing structures and new construction are eligible.

QUESTION: Under the old insurance program, a county had to require building permits for all construction in the entire county to become eligible for insurance. Is this still a requirement?

ANSWER: At the present time, yes. However, HUD has six months from the date of passage of the new law to inform all flood-prone communities of their flood problem. HUD also intends to furnish to those communities

preliminary maps outlining all the known flood problem areas. After those maps are furnished, a county would have to require permits only in those designated flood-prone areas to become eligible.

QUESTION: Even after the maps have been furnished, does a Montana county have the statutory authority to require and review building permits?

ANSWER: No. A county can zone and require special-use permits as part of a zoning resolution, but a zoning resolution cannot properly be used to regulate the way in which buildings are to be constructed. In addition, zoning can be undertaken only in accordance with a master plan. Most Montana counties do not presently have completed plans.

QUESTION: How, then, can a Montana county comply with the federal flood insurance requirements by July 1, 1975?

ANSWER: If the State, through implementation of the Floodway Management and Regulation Act, enforces the land-use restrictions in all of the HUD designated areas, a county would become eligible. In addition, if HB 924 passes, cities and counties would be given the authority to require and review building permits within the designated flood-plain areas.

QUESTION: The terms 100-year floodplain, floodway, and flood fringe are confusing. What's the difference?

ANSWER: The 100-year floodplain is the entire area that would be covered by water during a 100-year frequency flood. As shown in the sectional view in Figure 1, the floodplain includes areas of ponded water and areas where flood heights and velocities are slight. The floodway is that portion of the floodplain that is required to convey floodwaters downstream without an appreciable increase in flood heights or velocities. The floodway is the more hazardous portion of the floodplain because of high depth and velocity. In addition, obstructions placed in the floodway would be much more apt to raise flood levels or divert flood waters onto someone else.

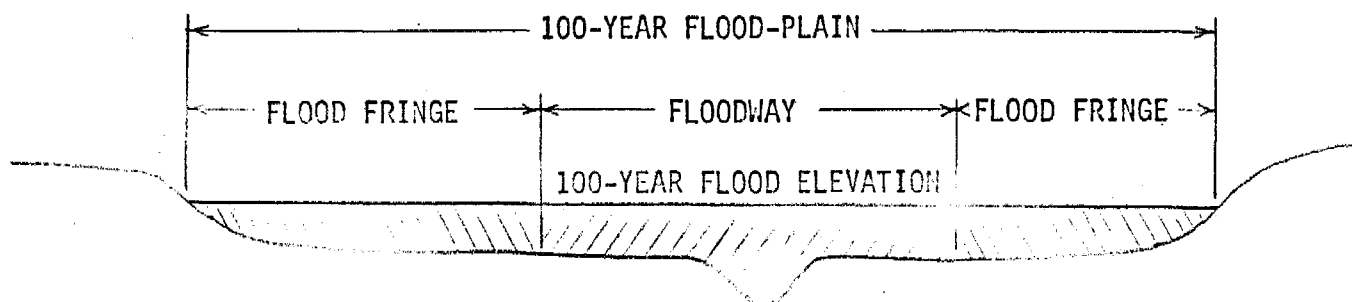


Figure 1---CHANNEL CROSS SECTION

QUESTION: What will flood-plain regulations and flood insurance do to property values?

ANSWER: This is a difficult question to answer because the market value of property is dependent upon so many factors. In addition, the impact of land-use regulation upon land value would depend heavily upon how restrictive those regulations are. If residential building is completely prohibited, as under the existing State regulations, then it is evident that the value of undeveloped property will drop substantially. If HB 924 passes, however, then building is prohibited only within the floodway, and land-values in the remainder of the floodplain may be enhanced.

Great Falls is presently the only area in the State with a two-zone floodplain program, and Great Falls has had flood insurance since May, 1972. Regulations and insurance have had the following impacts on land values in the Great Falls area:

1. Within the floodway, the value of developed property increased somewhat because of the availability of insurance. Prior to participation in the insurance program, people were having difficulty selling homes because people in Great Falls, remembering 1964, have a vivid perception of the flood threat.
2. Undeveloped property in the Sun River floodway is scarce, and transactions since the availability of insurance have apparently been very few. It is assumed that undeveloped land values have decreased, but not significantly since no one was buying this property for residential purposes since 1964 anyway.
3. In the flood fringe, both undeveloped and developed property increased significantly in value. Two specific examples provided were homes that sold for \$6,000 and \$13,000 prior to the insurance program that recently sold for \$14,000 and \$27,000 respectively. The availability of low-cost insurance, in spite of the land-use regulation, is considered to be the major reason for the enhanced property values.

The above general information was gleaned from conversations with a prominent Great Falls banker, a realtor, the area Reclassification Officer, and the Great Falls Zoning Administrator. It would be unwise to suggest that the same effects would occur everywhere else in Montana, but it appears that similar results would occur for similar areas where the flood problem is well-recognized.

QUESTION: What happens to a designated flood-plain area if a flood-control structure such as a dam is constructed?

ANSWER: A properly designed and constructed flood control structure would change flooding characteristics and the limits of the designated flood-plain would be reduced or eliminated entirely. A permit would be required for a flood control structure, however, to insure that it was properly designed and constructed.

QUESTION: Aren't structures always a better solution to flood problems?

ANSWER: Not necessarily. Structures often do a good job of reducing damages, but they are far too expensive to be used everywhere. In addition, structures often encourage development in adjacent, unprotected areas so that flood damages, in the long run, may be increased.

QUESTION: What happens if HB 924 doesn't pass. Can a person build a home on the flood-plain?

ANSWER: Of HB 924 does not pass, then the present state standards prohibiting homes would take effect within a year after a public hearing.

QUESTION: If HB 924 passes, can a home be built on a flood-plain?

ANSWER: If it is located outside the floodway, a home can be built provided that it is built on fill. Homes cannot be built within the floodway portion of the floodplain.

PROPOSED AMENDMENTS TO HB 924

Amend on page 1, line 4 of the catchline by omitting "89-3503" and inserting in lieu thereof "89-3502"

Further amend on page 4, after line 21, by inserting a new Section 2 reading as follows:

"Section 89-3502, R.C.M. 1947, is amended to read as follows:

"89-3502. Policy and purposes. The policy and purposes of this act are to guide development of the floodway areas of this state consistent with the enumerated findings; to recognize the right and need of watercourses to periodically carry more than the normal flow of water; to provide state co-ordination and technical assistance to local units in management of floodway areas; to co-ordinate federal, state and local management activities for floodway areas; to encourage local governmental units to manage flood-prone lands including the adoption, enforcement and administration of land-use regulations and to provide the Montana water resources board with authority necessary to carry out a comprehensive floodway management program for the state.

Specifically, it is the purpose of this act to:

(1) restrict or prohibit uses which are dangerous to health, safety of property in times of flood or cause increased flood heights or velocities;

(2) require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;

(3) develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazard;

(4) distinguish between the land-use regulations applied to the designated floodway and those applied to that portion of the designated floodplain not contained within the designated floodway;

(5) apply more restrictive land-use regulations within the designated floodway;

(6) ensure that regulations and minimum standards adopted under this act, insofar as possible, balance the greatest public good with the least private injury."

and renumber the subsequent sections accordingly

Photocopied from collections in the Montana Historical Society Archives

Further amend on page 4, line 25, by inserting after the number and punctuation "(1)" the letter "(a)"

Further amend on page 5, after line 8, by inserting the following material:

"(b) Before the board establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation shall include, but not be limited to, the following:

(i) Specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as considered appropriate;

(ii) Notifying local officials, including members of the county commission, city council and planning board, of the progress of surveys, studies and investigations and of proposed findings, along with information concerning data and methods employed in reaching such conclusions; and

(iii) Encouraging local dissemination of information concerning surveys, studies and investigations, so that interested persons will have an opportunity to bring relevant data to the attention of the department."

Further amend on page 6, line 3, by inserting after the word and punctuation "act." the following material:

"In adopting these standards, rules, and regulations, the board shall consider local input from the affected political subdivisions."

Further amend on page 8, line 20, by inserting after the word "designated" the words "floodplain or a designated"

Further amend on page 9, line 7, by omitting "designated floodplain and the"

Further amend on page 9, after line 24, by inserting the following:

"(3) Permits shall be granted for the following uses within that portion of the floodplain not contained within the designated floodway, to the extent that they are not prohibited by any other ordinance, regulation or statute:

(a) Any use permitted in the designated floodway;

(b) Structures, including, but not limited to, residential, commercial, and industrial structures, provided that:

(i) such structures meet the minimum standards adopted by the board;

(ii) residential structures are constructed on fill such that the lowest floor elevation (including basements) is two (2) feet above the one hundred (100)-year flood elevation;

(iii) commercial and industrial structures are either constructed on fill as specified in subparagraph (ii) above, or are adequately floodproofed up to an elevation no lower than two (2) feet above the one hundred (100)-year flood elevation. Such floodproofing shall be in accordance with the minimum standards adopted by

the board."

and renumber the subsequent subsection accordingly

Further amend on page 13, line 9, by striking the word "its" and inserting in lieu thereof "or the responsible political subdivision, or"

Further amend on page 13, line 10, by inserting after the word "employees" the word "thereof"

WITNESS STATEMENT

Name Thomas France Date Jan 12, 1974
Address Box 12 HELENA, MONT Support ? ☒
Representing ENVIRONMENTAL INFO CENTER Oppose ? ☐
Which Bill ? HB 924 Amend ? ☒

Comments:

WITH AMENDMENTS

Please leave prepared statement with the committee secretary.

Tom H. H. H.



ENVIRONMENTAL INFORMATION CENTER

P.O. BOX 12
HELENA, MONTANA 59601

Amendments to HB 924

Amend page 5, Section 2, Subsection 2, line 19, by striking the words and punctuation "~~REASONABLE-HYDROLOGICAL-DATA-~~", and inserting lieu thereof the phrase "THE BEST AVAILABLE HYDROLOGICAL DATA."

Further Amend page 10, Section 4, Subsection 3, line 1, by inserting between the word "DESIGNATED" and the word "FLOODWAY" the words "FLOOD PLAIN OR".

Further Amend page 10, by inserting a new subsection (4) between lines 8 and 9. The new subsection shall read as follows:

(4) The board may, by order, after a public hearing in the affected area, establish the limits of the designated floodplain only in predominantly rural areas without regard to the distinction between 'floodplain' and 'floodway'. In such instances the nonconforming uses as stipulated in Section 4, Subsection 3. of this act shall be prohibited within the designated floodplain.

WITNESS STATEMENT

Name H.S. HANSON Date 2/12/74
Address 1717 11th Ave Support ? ☒
Representing MONT. TECHNICAL COUNCIL Oppose ? ☐
Which Bill ? HB 924 Amend ? ☐

Comments:

1. It changes the present (1) Zone classification of flood plains to a (2) Zone System. This makes the law more flexible than at present. The present law does not allow any building in any floodway or flood zone. HB 924 will allow certain types of development in a floodway, if it is flood-protected but would not allow any building in a flood zone.
2. It will take the permit system away from the state and put it on a local level. If the local agency does not perform its duties properly, the state does have the authority, after a public hearing, to remove the permit system from the local level and reinstate this system at the state level.

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name Joseph B. Gary Date 2-12-74
Address 1107 So. Third - Bozeman Support ? Yes
Representing Riverside Country Club Oppose ? _____
Which Bill ? 924 Amend ? _____

Comments: Riverside Country Club, organized in 1959, planned a residential subdivision as part of its original plans. 320 acres of land were purchased, and a subdivision was created in 1969, platted and filed. When the subdivision was sold in late 1972, plans proceeded to expand the club facilities by approximately \$450,000 - Now, because of floodplain requirements as now constituted, all development is threatened and a great loss would be sustained.

The development contemplates its own water system, sewer system, roads and self-contained management. Diking has already been made above the 100 year flood plain so that safeguards are provided. We urge passage of bill so as to permit development of an economically sound program, with adequate safeguards.

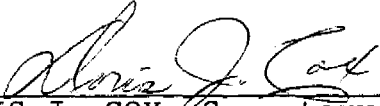
Please leave prepared statement with the committee secretary.

N A T U R A L R E S O U R C E S

SENATE COMMITTEE

1974

SENATOR MCGOWAN, Chairman



DORIS J. COX, Secretary

COMMITTEE ON NATURAL RESOURCES

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
474	2/22/74	3/5/74	3/6/74						3/6/74
550	2/21/74	2/28/74	3/6/74						3/6/74
628	1/28/74	2/12/74 3/6/74	3/6/74				3/6/74		
732	2/6/74	2/19/74	2/23/74					2/23/74	
795	2/16/74	2/26/74	3/2/74						3/2/74
801	2/11/74	2/28/74	2/28/74				2/28/74		
922	2/5/74	2/19/74	2/23/74					2/23/74	
924	2/22/74	3/4/74	3/5/74					3/5/74	
949	2/21/74	3/4/74	3/5/74					3/5/74	
969	2/22/74	3/4/74	3/6/74					3/6/74	
1005	2/22/74	2/28/74	3/6/74				3/6/74		
1010	2/16/74	3/6/74	3/6/74					3/6/74	
1014	2/22/74	Held in Committee at Request of Sponsor							

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF MEETING
SENATE COMMITTEE ON
NATURAL RESOURCES

March 4, 1974

The Senate Committee on Natural Resources met in Senate Chambers on March 4, 1974, at 7:30 P.M. The meeting was called to order by Chairman Gordon McGowan. Upon roll call all members of the committee were present.

Consideration of SR 63

Chairman McGowan presented the resolution to the committee and asked for prompt action.

Disposition of SR 63

It was moved by Senator Bollinger, seconded by Senator Flynn that SR 63 BE ADOPTED. This motion carried unanimously.

Consideration of HB 924

Rep. Halvorsen, chief sponsor, explained the bill. She stated that the bill is necessary in order for Montana to conform to the federal law.

Gary Wicks, Department of Natural Resources stated the bill is needed because of the passage of new federal floodway laws. If communities fail to adopt acceptable regulations by July 1, 1975, no bank can make loans in the area of flood hazards. He presented written questions and answers on the problem to the committee - copy attached.

Frank Guay, Flathead Floodplains Association, representing about 6,000 people in the Flathead Valley also testified in support of the bill.

Neil T. Allread, representing Conrad National Bank urged passage of the bill. He stated the lending institutions support the bill and it is a very good bill.

Joe A. DeLong, and Clifford Haines, Flathead County Commissioners testified in full support of the bill.

Senator Siderius, Flathead County, stated he highly endorses the bill.

Gary Wicks presented a proposed amendment to the committee, to amend the third reading bill, on page 11, line 4, by inserting after the word "board" the words "or the responsible political subdivision"

It was moved by Senator Bertsche, seconded by Senator Bollinger that the foregoing amendment be adopted. This motion carried unanimously.

Disposition of HB 924

It was moved by Senator Bertsche, seconded by Senator Cochrane that HB 924 AS SO AMENDED BE CONCURRED IN. This motion carried unanimously.

Consideration of HB 949

Gary Wicks, Department of Natural Resources, presented the bill to the committee in the absence of Representative Joe Roberts. He stated that the bill simply gives the Fish & Game Department the statutory right to represent the public in stream adjudication as to existing recreational rights. This bill would assist the Department of Natural Resources in getting the streams adjudicated.

Conrad Fredricks, representing Sweet Grass County Preservation Association, testified in opposition to the bill. He stated the bill as written would allow the Fish and Game Department to come into the existing water right determinations to try to establish existing public recreational uses. He stated the bill will only add to the time and effort and court proceedings with regard to existing rights determinations. He expressed concern that the passage of this legislation might be construed as legislative recognition of recreational use prior to 1972, before the Water Use Act came into effect. He proposed an amendment to the bill, as follows:

Amend the blue third reading House bill, Section 1, page 2, line 14, by striking the period following the word "act" and by inserting the following material in lieu thereof: ", provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use."

Others testifying in opposition to the bill were Ted Thompson and Spike Van Cleve of the Big Timber area. They expressed concern that recreational rights might be preempted for agricultural rights.

Disposition of SB 949

It was moved by Senator Bertsche, seconded by Senator Bennett, that the above proposed amendment submitted by Conrad Fredricks be adopted. This motion carried unanimously.

It was moved by Senator Bennett, seconded by Senator Bertsche, that SB 949 AS AMENDED BE CONCURRED IN. This motion carried unanimously.

ROLL CALL

SENATE
NATURAL RESOURCES COMMITTEE

SECOND HALF - 43rd LEGISLATIVE SESSION 1974

Date 3/4/74

NAME	PRESENT	ABSENT	EXCUSED
Gordon McGowan, Ch.	✓		
Bill Bertsche, V. Ch.	✓		
Gordon Bollinger	✓		
Percy De Wolfe	✓		
Elmer Flynn	✓		
<i>Jack McDonald</i> ~~Luke McKeen~~	✓		
George Bennett	✓		
Archie Cochrane	✓		
George Darrow	✓		
George McCallum	✓		
Earl Moritz	✓		

COMMITTEE ON

Natural Resources

BILL NO.

949, 1014

VISITOR'S REGISTER

NAME	REPRESENTING	BILL NO	Check One	
			Support	Oppos
Gene Phillips	Docker Coal Co.	HB 1014		X
Bob Conette	Western Energy Co	HB 1014		X
Pat Adams	Mont. Coal Council	HB 1014		X
Comad B. Fredricks	Sweet Grass Co. Pds. Assn	HB 969		X
" " "	" " " " "	HB 949		X
Everett H. Mattland	Montana Farm Bureau	HB 969		X
Wm Woodgate	Fish & Game	HB 949		X
G Wicks	Wet Res	949	✓	
Frank Brown	Flathead Floodplain	924	✓	
John S. Selman	Flathead Floodplain Assn	924	✓	
Wesley A. Allen	Forest National Bank	924	✓	
Joe A. We Love	Flathead Co - MACO	924	✓	
Clifford E. Harnett	Flathead Co. Comm	924	✓	
Chas J. Thelvarson	State L.P.	924	✓	
HAROLDSON FAGE	STATE RFD	969	SPONSOR	
Dorothy Bradley	State Res	1014	X	
Cora Beth Gray	Flathead County	924	X	
Samuel Van C. Dune	Big Timber	949 969		X
Clyde Sullivan	McC. Lead	969		X
Samuel L. Dunsfield	Big Timber	969		X
BENE SPILDE	Big Timber	969		X
Don X. Wagner	Walt Haystack Cattle Co	969		
Teddy Thompson	Big Timber Water Users	949		X
ADAMS TIEGAN	LIVESTOCK ASSN	969		X

FLOOD PLAIN MANAGEMENT STATUS

Since our public information meetings held in November and December, two significant things have occurred that will affect the State flood-plain management program.

The first and perhaps most significant is the passage of a new federal flood insurance law in late December. This law, entitled the Flood Disaster Protection Act of 1973, completely changes the scope of the existing national flood insurance program since participation in the insurance program will be mandatory for those areas with a flood problem. Accordingly, under Section 201 of the act, HUD is required to notify each community in the nation that is considered to have a flood problem. Such notice, together with a map outlining the area of special flood hazard (100-year flood plain) has been sent to several Montana communities. Altogether, HUD has indicated tentatively that 66 Montana cities and towns and 20 Montana counties will be so notified.

After a community has been notified by HUD, the community has until July 1, 1975 to adopt acceptable land-use regulations for its area of special flood hazard and to apply for participation in the insurance program. If a community fails to adopt acceptable regulations by July 1, 1975, Section 202 of the law provides that no federally regulated or insured bank can make real estate or construction loans in the area of special flood hazard. In addition, no federal agency can approve any financial assistance for acquisition or construction purposes, including disaster relief, unless the community is eligible.

The land-use regulations required by HUD are based on the "two-zone" or "floodway-flood fringe" concept. This is a regulatory concept that attempts to relate the degree of land-use control to the degree of flood hazard involved. To this end, a portion of the entire 100-year flood plain is reserved for the passage of floodwaters. This is the "floodway", and since it is to be reserved for flowing flood waters, a strict prohibition on most structures is adopted. The remainder of the flood plain is still subject to flooding, but in most cases the water is shallow and velocities are slight. Since construction in this area is not so hazardous and would have little obstructing effect on the downstream passage of floods, this "flood fringe" area can be developed with only slight regulation. Thus, any and all types of development are permitted in this area provided that they are built on fill or floodproofed. HUD's minimum requirements would require homes to be built on fill while all other structures would have the option of fill or floodproofing.

The determination of a floodway requires a hydraulic engineering study, however, that will not be available when HUD initially informs communities that they have a flood hazard area. Thus, if a community has no floodway or flood elevation data initially, HUD regulations require only that the community require and review building permits for new construction and major repairs. Until such time as more detailed flood information is provided by HUD, each permit application would have to be reviewed on a case-by-case basis to determine the degree of flood hazard.

Once an area becomes eligible for the sale of flood insurance, all existing structures and new construction are eligible for subsidized flood insurance in the following amounts at the premium rates noted:

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After HUD finishes a rate-making study and provides floodway data to local officials, a second layer of coverage at actuarial rates becomes available. Thus, the total amount of coverage available becomes twice the amount listed above. In addition, once a rate study is completed, any new construction in the flood hazard area can obtain insurance only at actuarial rates.

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HB 924, if enacted, would make three substantive changes to the existing state law. First, and perhaps most important, is a change in wording to require the Department to delineate both a "floodway" and a "flood plain". This would make State regulations compatible with those of other States and Federal agencies.

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HB 924 will, if enacted, also shorten the length of time given for adoption of flood-plain regulations from one year to six months. The reason for this change is to insure that flood-plain regulations take effect before the July 1, 1975 deadline for participation in the flood insurance program. This will hopefully insure that the economic sanctions imposed for non-participation in the flood insurance program will not be required for any of the 95 Montana communities.

On the following pages is a list of questions and answers concerning the new flood insurance law and the proposed new State law. This list certainly will not answer all questions on such a complex issue, but will serve as a starting point for further discussion.

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QUESTION: If a community adopts the required land-use regulations and becomes eligible for flood insurance, is everyone in the flood-plain area required to purchase the insurance?

ANSWER: No. An individual would have the option to buy insurance to protect existing structures and contents if he chose to do so. Persons purchasing flood-plain properties would, however, be required to buy flood insurance if they borrow from a federally regulated or insured lending institution. In this case, the amount of insurance required would be the outstanding balance of the loan.

QUESTION: If a person buys flood insurance, is he still eligible for federal disaster relief benefits?

ANSWER: Yes. There is, however, a non-duplication of benefits clause in the Disaster Relief Act that would limit disaster relief to losses above those covered by insurance.

QUESTION: Is a person who was able to buy insurance but did not do so, eligible for disaster relief?

ANSWER: Yes, but he would be required to purchase flood insurance on reconstruction and repair work as a condition to receiving the disaster relief aid.

QUESTION: Suppose the community decides not to regulate land-use and does not participate in the insurance program. Are people still eligible for disaster relief?

ANSWER: No. Emergency rescue and repair would still be made available, but other benefits such as low-interest loans would be prohibited.

QUESTION: Once a community becomes eligible for insurance, is anyone prohibited from buying insurance?

ANSWER: No. All existing structures and new construction are eligible.

QUESTION: Under the old insurance program, a county had to require building permits for all construction in the entire county to become eligible for insurance. Is this still a requirement?

ANSWER: At the present time, yes. However, HUD has six months from the date of passage of the new law to inform all flood-prone communities of their flood problem. HUD also intends to furnish to those communities

preliminary maps outlining all the known flood problem areas. After those maps are furnished, a county would have to require permits only in those designated flood-prone areas to become eligible.

QUESTION: Even after the maps have been furnished, does a Montana county have the statutory authority to require and review building permits?

ANSWER: No. A county can zone and require special-use permits as part of a zoning resolution, but a zoning resolution cannot properly be used to regulate the way in which buildings are to be constructed. In addition, zoning can be undertaken only in accordance with a master plan. Most Montana counties do not presently have completed plans.

QUESTION: How, then, can a Montana county comply with the federal flood insurance requirements by July 1, 1975?

ANSWER: If the State, through implementation of the Floodway Management and Regulation Act, enforces the land-use restrictions in all of the HUD designated areas, a county would become eligible. In addition, if HB 924 passes, cities and counties would be given the authority to require and review building permits within the designated flood-plain areas.

QUESTION: The terms 100-year floodplain, floodway, and flood fringe are confusing. What's the difference?

ANSWER: The 100-year floodplain is the entire area that would be covered by water during a 100-year frequency flood. As shown in the sectional view in Figure 1, the floodplain includes areas of ponded water and areas where flood heights and velocities are slight. The floodway is that portion of the floodplain that is required to convey floodwaters downstream without an appreciable increase in flood heights or velocities. The floodway is the more hazardous portion of the floodplain because of high depth and velocity. In addition, obstructions placed in the floodway would be much more apt to raise flood levels or divert flood waters onto someone else.

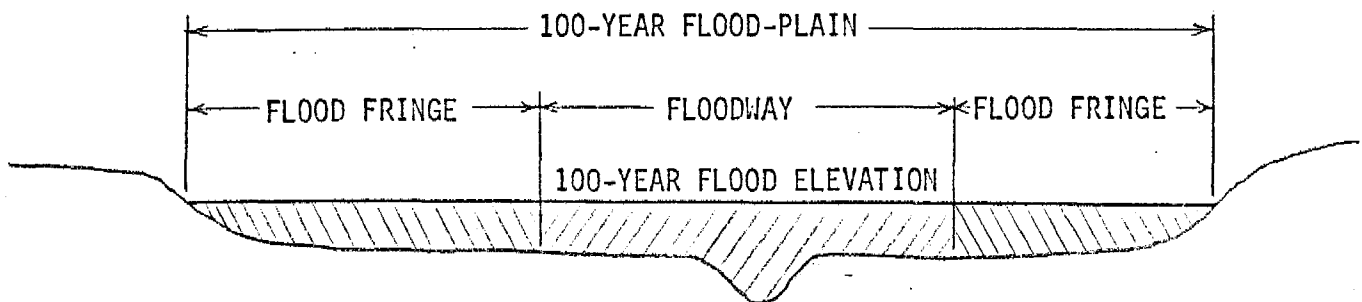


Figure 1---CHANNEL CROSS SECTION

QUESTION: What will flood-plain regulations and flood insurance do to property values?

ANSWER: This is a difficult question to answer because the market value of property is dependent upon so many factors. In addition, the impact of land-use regulation upon land value would depend heavily upon how restrictive those regulations are. If residential building is completely prohibited, as under the existing State regulations, then it is evident that the value of undeveloped property will drop substantially. If HB 924 passes, however, then building is prohibited only within the floodway, and land-values in the remainder of the floodplain may be enhanced.

Great Falls is presently the only area in the State with a two-zone floodplain program, and Great Falls has had flood insurance since May, 1972. Regulations and insurance have had the following impacts on land values in the Great Falls area:

1. Within the floodway, the value of developed property increased somewhat because of the availability of insurance. Prior to participation in the insurance program, people were having difficulty selling homes because people in Great Falls, remembering 1964, have a vivid perception of the flood threat.
2. Undeveloped property in the Sun River floodway is scarce, and transactions since the availability of insurance have apparently been very few. It is assumed that undeveloped land values have decreased, but not significantly since no one was buying this property for residential purposes since 1964 anyway.
3. In the flood fringe, both undeveloped and developed property increased significantly in value. Two specific examples provided were homes that sold for \$6,000 and \$13,000 prior to the insurance program that recently sold for \$14,000 and \$27,000 respectively. The availability of low-cost insurance, in spite of the land-use regulation, is considered to be the major reason for the enhanced property values.

The above general information was gleaned from conversations with a prominent Great Falls banker, a realtor, the area Reclassification Officer, and the Great Falls Zoning Administrator. It would be unwise to suggest that the same effects would occur everywhere else in Montana, but it appears that similar results would occur for similar areas where the flood problem is well-recognized.

QUESTION: What happens to a designated flood-plain area if a flood-control structure such as a dam is constructed?

ANSWER: A properly designed and constructed flood control structure would change flooding characteristics and the limits of the designated flood-plain would be reduced or eliminated entirely. A permit would be required for a flood control structure, however, to insure that it was properly designed and constructed.

QUESTION: Aren't structures always a better solution to flood problems?

ANSWER: Not necessarily. Structures often do a good job of reducing damages, but they are far too expensive to be used everywhere. In addition, structures often encourage development in adjacent, unprotected areas so that flood damages, in the long run, may be increased.

QUESTION: What happens if HB 924 doesn't pass. Can a person build a home on the flood-plain?

ANSWER: Of HB 924 does not pass, then the present state standards prohibiting homes would take effect within a year after a public hearing.

QUESTION: If HB 924 passes, can a home be built on a flood-plain?

ANSWER: If it is located outside the floodway, a home can be built provided that it is built on fill. Homes cannot be built within the floodway portion of the floodplain.

compensation benefits for injury causing death shall be sixty-six and two-thirds percent (66 ⅔%) of the decedent's wages. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. The minimum weekly compensation for death shall be fifty percent (50%) of the state's average weekly wage, but in no event shall it exceed the decedent's actual wages at the time of his death.

(2) *To beneficiaries as defined in section 92-413, subsections (5) and (6), weekly benefits shall be paid to the extent of the dependency at the time of the injury, subject to a maximum of sixty-six and two-thirds percent (66 ⅔%) of the decedent's wages. The maximum weekly compensation shall not exceed the state's average weekly wage.*

(3) *If the decedent leaves no beneficiary as defined in section 92-413, a lump sum payment of three thousand dollars (\$3,000) shall be paid to the decedent's surviving parent or parents.*

(4) Death benefits shall be paid to a widow or widower for life or until remarriage, and in the event of remarriage two (2) years' benefits shall be paid in a lump sum to the widow or widower. In all cases, benefits shall be paid to beneficiaries as defined in *section 92-413.*"

Section 3. Section 92-708, R.C.M. 1947, is amended to read as follows:

"92-708. **Compensation to run consecutively — manner of payment.** Compensation shall run consecutively and not concurrently and payment shall not be made for two (2) classes of disability over the same period. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving spouse and stepchildren of such spouse the compensation shall be divided equally among all beneficiaries. Compensation due to *beneficiaries as defined in section 92-413, subsections (5) and (6)* where there is more than one (1), shall be divided equitably among them and the question of dependency and amount thereof shall be a question of fact for determination by the division."

Section 4. This act shall be effective upon its passage and approval.

Approved March 21, 1974

CHAPTER NO. 270

AN ACT TO AMEND SECTION 92-704.1, R.C.M. 1947, RELATING TO BENEFIT REDUCTIONS UNDER THE WORKMEN'S COMPENSATION ACT; AUTHORIZING THE DIVISION TO MAKE CERTAIN PAYMENTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-704.1, R.C.M. 1947, is amended to read as follows:

"92-704.1. **Compensation for injury causing death.** Weekly compensation benefits for injury causing death shall be sixty-six and two-thirds percent (66 ⅔%) of the decedent's wages. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. The minimum weekly compensation for death shall be fifty percent (50%) of the state's average weekly wage, but in no event shall it exceed the decedent's actual wages at the time of his death.

Death benefits shall be paid to a widow or widower for life or until remarriage, and in the event of remarriage two (2) years' benefits shall be paid in a lump sum to the widow or widower. In all cases, benefits shall be paid to beneficiaries as defined in this act."

Section 2. There is a new section to be numbered 92-704.2, R.C.M. 1947, which reads as follows:

92-704.2. **Application of act.** The provisions of this act apply prospectively only. However, the division shall pay to any widow, widower or beneficiary who did or shall become eligible for compensation for injury causing death after June 30, 1973, and before July 1, 1974, such sum or sums necessary to bring the total amount of compensation paid or to be paid as long as such person has, or remains eligible for compensation, to the amount such person would have received without the reduction for benefits granted by the Social Security Act. The division shall pay such sums in a lump sum as to compensation periods past and bi-weekly as to compensation to become due and from a special fund appropriated for this purpose.

Section 3. This act is effective on its passage and approval.

Approved March 22, 1974

CHAPTER NO. 271

AN ACT AMENDING THE FLOODWAY MANAGEMENT AND REGULATION ACT, SECTION 89-3501 ET SEQ., R.C.M. 1947, TO PROVIDE FOR THE DESIGNATION OF FLOODPLAINS AND FLOODWAYS; TO SHORTEN TO SIX MONTHS THE TIME WITHIN WHICH A POLITICAL SUBDIVISION MAY ADOPT LAND-USE REGULATIONS; TO EMPOWER THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO SHORTEN UPON NOTICE THE SIX-MONTH TIME PERIOD WHEN NECESSARY TO COMPLY WITH FEDERAL FLOOD INSURANCE REGULATIONS; AND TO ALLOW LOCAL POLITICAL SUBDIVISIONS TO ADOPT EXCLUSIVE FLOODPLAIN AND FLOODWAY LAND-USE REGULATION AND PERMIT SYSTEMS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-3502, R.C.M. 1947, is amended to read as follows:

"89-3502. **Policy and purposes.** The policy and purposes of this act are to guide development of the floodway areas of this state consistent with the enumerated findings; to recognize the right and need of watercourses to periodically carry more than the normal flow of water; to provide state co-ordination and technical assistance to local units in management of floodway areas; to co-ordinate federal, state and local management activities for floodway areas; to encourage local governmental units to manage flood-prone lands including the adoption, enforcement and administration of land-use regulations and to provide the Montana water resources board with authority necessary to carry out a comprehensive floodway management program for the state.

Specifically, it is the purpose of this act to:

- (1) restrict or prohibit uses which are dangerous to health, safety of property in times of flood or cause increased flood heights or velocities;
- (2) require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;
- (3) develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazard;
- (4) *distinguish between the land-use regulations applied to the designated floodway and those applied to that portion of the designated floodplain not contained within the designated floodway;*
- (5) *apply more restrictive land-use regulations within the designated floodway;*
- (6) *ensure that regulations and minimum standards adopted under this act, insofar as possible, balance the greatest public good with the least private injury."*

Section 2. Section 89-3503, R.C.M. 1947, is amended to read as follows:

"89-3503. **Definitions.** As used in this act, unless the context otherwise requires:

- (1) "A flood of one hundred (100) year frequency" means a flood magnitude expected to recur on the average of once every one hundred (100) years, or a flood magnitude which has a one percent (1%) chance of occurring in any given year;
- (2) "Channel" shall mean the geographical area within either the natural or artificial banks of a watercourse or drainway;
- (3) "Board" shall mean the board of natural resources and conservation;
- (4) "Department" means the department of natural resources and conservation provided for in title 82A, chapter 15;
- (5) "Designated floodway" shall mean a floodway whose limits have been designated and established by order of the board.

(6) "Designated floodplain" means a floodplain whose limits have been designated and established by order of the board;

(7) "Drainway" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water less than nine (9) months of the year, having a bed and well-defined banks; provided, that in the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse;

(8) "Flood" shall mean the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway;

(9) "Floodway" shall mean the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the flood water of any watercourse or drainway;

(10) "Floodplain" shall mean the area adjoining the watercourse or drainway which would be covered by the flood water of a flood of one hundred (100) year frequency;

(11) "Establish" shall mean construct, place, insert, or excavate;

(12) "Natural obstruction" shall mean any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodplain or floodway by a nonhuman cause;

(13) "Artificial obstruction" shall mean any obstruction which is not a natural obstruction and includes any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodplain or floodway which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property;

(14) "Owner" shall mean any person who has dominion over, control of, or title to an obstruction;

(15) "Political subdivision" shall mean any incorporated city or town or any county organized and having authority to adopt and enforce land-use regulations; and

(16) "Responsible political subdivision" means a political subdivision that has enacted land-use regulations in accordance with this act.

(17) "Watercourse" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water at least nine (9) months of the year, having a bed and well-defined banks; provided, that it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse."

Section 3. Section 89-3504, R.C.M. 1947, is amended to read as follows:

"89-3504. Program for delineation of floodways — floodway-encroachment lines — land-use regulations. (1)(a) The board shall initiate a comprehensive program for the delineation of designated floodplains and designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data, and have authority to enter into arrangements with the United States geological survey, the United States army corps of engineers or any other state or federal agency for such acquisition.

(b) *Before the board establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation shall include, but not be limited to, the following:*

(i) *specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as considered appropriate;*

(ii) *notifying local officials, including members of the county commission, city council and planning board, of the progress of surveys, studies and investigations and of proposed findings, along with information concerning data and methods employed in reaching such conclusions; and*

(iii) *encouraging local dissemination of information concerning surveys, studies and investigations, so that interested persons will have an opportunity to bring relevant data to the attention of the department.*

(2) When sufficient data have been acquired, the board shall establish, by order, after a public hearing, *the designated floodplain* within which a political subdivision may establish land-use regulation. *When sufficient data have been acquired, the board shall establish, by order, after a public hearing, the designated floodway within which a political subdivision may establish land-use regulation. These designations shall be based upon reasonable hydrological certainty. When the designated floodplain or the designated floodway has been established, the board shall furnish such data to officials of the political subdivision having jurisdiction over such areas together with a map outlining the areas involved, a copy of this act, adopted rules and regulations of the board, and suggested minimum standards. These standards, rules and regulations shall reflect gradations in flood hazard based on criteria as outlined in subsection (2) of section 89-3507 of this act. In adopting these standards, rules, and regulations, the board shall consider local input from the affected political subdivisions. The board shall record all designated floodplains or designated floodways established by it in the office of the county clerk and recorder of each county in which such floodplains or floodways are found. The board shall have the power to alter such floodplains or floodways at any later time, by order, after a public hearing if a re-evaluation of the then available flood data warrants it. Notice of any such hearing or order of the board establishing or altering any such floodplains or floodways shall be given by publishing such notice once each week for three consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten (10) days prior to the date set for the hearing or the effective date of such order.*

(3) *Upon transmittal of the floodplain information to officials of a political subdivision, the political subdivision has six (6) months from the date of transmittal to adopt land-use regulations which meet or exceed the minimum standards of the board. If within the six (6) month period the political subdivision has failed to adopt the land-use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the board under subsection (2) of this section, and no artificial obstruction or nonconforming use shall be established by any person within the designated floodplain or the designated floodway, unless specifically authorized by the board. When necessary for compliance with federal flood insurance requirements, the board may shorten the six (6) month period upon notification to the political subdivision and publication of a notice thereof in a newspaper of general circulation in the affected area once a week for three (3) consecutive weeks."*

Section 4. Section 89-3505, R.C.M. 1947, is amended to read as follows:

"89-3505. Artificial obstructions and nonconforming uses as nuisances. Any artificial obstruction or nonconforming use in any *designated floodplain* or designated floodway enforced under section 89-3504, subsections (3) or (4) and not exempt under section 89-3506 of this act is hereby declared to be a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the department or the responsible political subdivision."

Section 5. Section 89-3506, R.C.M. 1947, is amended to read as follows:

"89-3506. Establishment of artificial obstructions or nonconforming uses unlawful — permitted open space uses — prohibited nonconforming uses. (1) It shall be unlawful for a person to establish any artificial obstruction or nonconforming use within a designated floodplain or a designated floodway, without a permit from the department or the responsible political subdivision. This act shall not affect any existing artificial obstruction or nonconforming use established in the *designated floodplain* or designated floodway prior to the effective date of this act and before the board has enforced a designated floodplain or a designated floodway under section 89-3504, subsections (3) or (4); provided, that no person shall make nor shall any owner allow alterations of any artificial obstruction or nonconforming use within a designated floodplain or a designated floodway whether the obstruction proposed for alteration was located in the floodplain or floodway before or after the effective date of this act except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction shall not be construed to be an alteration.

(2) The following open space uses shall be permitted within the designated floodway, to the extent that they are not prohibited by any other ordinance or statute, and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment; (a) agricultural uses (b) industrial-commercial uses such as loading areas, parking areas, emergency landing strips (c) private and public

recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails (d) forestry, including processing of forest products with portable equipment (e) residential uses such as lawns, gardens, parking areas and play areas (f) excavations subject to the issuance of a permit under section 89-3507.

(3) *Permits shall be granted for the following uses within that portion of the floodplain not contained within the designated floodway, to the extent that they are not prohibited by any other ordinance, regulation or statute:*

(a) *any use permitted in the designated floodway;*

(b) *structures, including, but not limited to, residential, commercial, and industrial structures, provided that:*

(i) *such structures meet the minimum standards adopted by the board;*

(ii) *residential structures are constructed on fill such that the lowest floor elevation (including basements) is two (2) feet above the one hundred (100)-year flood elevation;*

(iii) *commercial and industrial structures are either constructed on fill as specified in subparagraph (ii) above, or are adequately floodproofed up to an elevation no lower than two (2) feet above the one hundred (100)-year flood elevation. Such floodproofing shall be in accordance with the minimum standards adopted by the board.*

(4) The following nonconforming uses shall be prohibited within the designated floodway: (a) Any building for living purposes or place of assembly or permanent use by human beings (b) any structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway (c) the construction or permanent storage of any object subject to flotation or movement during flood level periods."

Section 6. Section 89-3507, R.C.M. 1947, is amended to read as follows:

"89-3507. **Permits for obstructions — application — factors considered — fees.** (1) The *department or the responsible political subdivision* shall have the power to issue permits for the establishment or alteration of *artificial obstructions and nonconforming uses* which would otherwise violate section 89-3506 of this act. The application for the permit shall contain such information as the *department or the responsible political subdivision* shall require, including complete maps, plans, profiles and specifications of the obstruction *or use* and watercourse or drainway.

(2) In passing upon such application, the *department or the responsible political subdivision* shall consider *in accordance with the minimum standards established by the board* (a) the danger to life and property by water which may be backed up or diverted by such obstruction *or use*, (b) the

danger that the obstruction *or use* will be swept downstream to the injury of others, (c) the availability of alternate locations, (d) the construction or alteration of the obstruction *or use* in such a manner as to lessen the danger, (e) the permanence of the obstruction *or use*, (f) the anticipated development in the foreseeable future of the area which may be affected by the obstruction *or use*, and (g) such other factors as are in harmony with the purpose of this act. The *department or the responsible political subdivision* may make a part of such permit any reasonable conditions it may deem advisable. In order for the permit to continue to remain in force, the obstruction *or use* must be maintained so as to comply with the conditions and specifications of the permit.

(3) Permits for obstructions *or uses* to be established in the *designated floodplain or designated floodway* of watercourses must be specifically approved or denied within a reasonable time by the *department or the responsible political subdivision*; permits for obstructions *or uses* in the *designated floodplains or designated floodways* shall be conclusively deemed to have been granted sixty (60) days after the receipt of such application by the *department or the responsible political subdivision*, or after such time as the board *or the responsible political subdivision* shall specify, unless the *department or the responsible political subdivision* notifies the applicant that the permit is denied. The *responsible political subdivision* shall send to the *department* a copy of each permit granted pursuant to this section.

(4) Every application for a permit shall be accompanied by a nonrefundable application fee of ten dollars (\$10) which the state treasurer shall credit to the floodway obstruction removal fund."

Section 7. Section 89-3508, R.C.M. 1947, is amended to read as follows:

"89-3508. **Powers and duties of board relative to obstructions.** The powers and duties of the board relative to obstructions in a board floodway shall include the following:

(1) Where an obstruction to a *designated floodway* established under section 89-3504, subsections (2) or (4) has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the board may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the board; and

(2) Where, after investigation, notice, and hearing, an order has been issued to the owner of an obstruction not exempt under the provisions of section 89-3506 of this act for its removal or repair, and the order is not complied with within such reasonable time as may be prescribed, or if the owner cannot be found or determined, the board may make or cause such removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law."

Section 8. Section 89-3509, R.C.M. 1947, is amended to read as follows:

"89-3509. **Authority to enter and investigate lands or waters.** The

board, or the responsible political subdivision, or agents, surveyors, or other employees thereof, may make reasonable entry upon any lands and waters in the state for the purpose of making any investigation, survey, removal, or repair contemplated by this act. An investigation of any natural or artificial obstruction or nonconforming use shall be made by the board either on its own initiative, on the written request of any three (3) titleholders of land abutting the watercourse or drainway involved, or on the written request of any political subdivision."

Section 9. Section 89-3510, R.C.M. 1947, is amended to read as follows:

"89-3510. **Obstructions exempt where drainage area is small.** This act shall not extend to any obstruction in the floodplain or floodway of a watercourse or drainway where the drainage area above the same, either within or without the state, is less than twenty-five (25) square miles in extent, unless a particular watercourse or drainway is expressly declared to be within the coverage of this act by order of the board."

Section 10. Section 89-3511, R.C.M. 1947, is amended to read as follows:

"89-3511. **Orders and rules — judicial remedy.** The board may issue such orders and rules as are necessary to implement the provisions of this act. If an order is issued to the owner of an artificial obstruction or nonconforming use not exempt under the provisions of section 89-3506 of this act for its removal or repair, such order shall not become effective less than (10) days after a hearing is held relating to such order. In addition to any requirement imposed by subsection (2) of section 89-3504 of this act, where any order is issued which affects with particularity the land adjacent to any watercourse or drainway, notice of the contents of such order and of any required hearing shall be mailed by the board to the titleholder of such land not less than ten (10) days before the effective date of such order, or, if there is a required hearing, to the titleholder of such land and to the owner of the artificial obstruction or nonconforming use not less than ten (10) days before the date of such hearing; provided, that such notice need not be given to the owner of the artificial obstruction or nonconforming use for an order issued pursuant to subsection (2) of section 89-3508 of this act if the owner cannot be found or determined. All orders and rules issued by the board shall be on file at the offices of the board and in the office of the county clerk of each county affected by such order or rule. Any person aggrieved by any order of the board issued under this act may appeal from such order to a court of competent jurisdiction within thirty (30) days after its effective date. In the event such an appeal is taken, enforcement of such order shall be stayed pending the outcome of such appeal. Service of notice of the appeal shall be made upon the director of the board."

Section 11. Section 89-3514, R.C.M. 1947, is amended to read as follows:

"89-3514. **Permit construed as added requirement—exception—immunity.** (1) The granting of a permit under the provisions of this act shall in no way affect any other type of approval required by any

other statute or ordinance of the state, of any political subdivision or of the United States, but shall be construed as an added requirement; provided, that if a political subdivision enacts in harmony with the purposes of this act permit issuance ordinances, regulations or resolutions and land-use ordinances, regulations or resolutions which meet or exceed the minimum standards of the board, and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the board, no permit from the department is required; however, if the board determines that there is a failure by a political subdivision to comply with the intent, purposes and provisions of this act and the minimum standards adopted thereunder, the powers of the political subdivision may be suspended after hearing, and the minimum standards adopted by the board shall be enforced by the department until such time as the board determines that the political subdivision will comply. The grant or denial of a permit shall not have any effect on any remedy of any person at law or in equity; provided, that where it is shown that there is a wrongful failure to comply with this act, there shall be a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of any person bringing suit.

(2) No action for damages sustained because of injury caused by an obstruction for which a permit has been granted under this act shall be brought against the state, the board, a member of the board, or its employees or agents. No provision of this act shall be construed as interfering in any way with the right of the United States to regulate interstate commerce or the navigable waters of the United States."

Section 12. This act is effective on its passage and approval.

Approved March 21, 1974

CHAPTER NO. 272

AN ACT AMENDING SECTIONS 92-702.1, AND 92-704.1, R.C.M. 1947, RELATING TO THE PAYMENT OF WORKMEN'S COMPENSATION BENEFITS FOR TOTAL PERMANENT DISABILITY, AND DEATH, BY ADJUSTING PROVISIONS ALLOWING WORKMEN'S COMPENSATION INSURERS TO REDUCE WORKMEN'S COMPENSATION PAYMENTS BY THE AMOUNT OF FEDERAL PERIODIC BENEFITS PAID TO A CLAIMANT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-702.1, R.C.M. 1947, is amended to read as follows:

"92-702.1. **Compensation for injuries producing total permanent disability.** Weekly compensation benefits for injury producing total permanent disability shall be sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the wages received at the time of the injury. The maximum weekly